an action of trespass on the case. There was no allegation of concert, collusion, or the pursuit of a common design. *Held,* on demurrer to the declaration, that no joint liability was shown, and therefore there was a misjoinder of defendants, and the demurrer was sustained. *Farley* v. *Crystal Coal & Coke Co.* (W. Va., 1920), 102 S. E. 265.

This case fully examines the authorities on the question of joint liability, and concludes that there is no such liability on these facts, going so far as to expressly overrule a recent prior case which laid down the opposite rule. Conceding that the court was right on this point, did it follow that the demurrer must be sustained and the parties compelled to maintain and defend as many separate actions as there were defendants? The common law required such separate actions. But inasmuch as a single action is much superior in point of justice and convenience, some modern statutes have expressly authorized the joinder of defendants severally liable, and the rendition of separate judgments for or against each. England, Order 16, rule 4; Michigan, C. L. 1915, Sec. 12366. There is no reason, however, why the courts should not themselves allow such a joinder, without any statute, under their inherent power to regulate procedure. If separate actions had been brought against each tort feasor on the facts shown in the principal case, it would have been within the discretionary power of the court to order them consolidated for trial. *Mutual Life Ins. Co.* v. *Hillmon,* 145 U. S. 285. Why, then, should not the court have treated the case as a consolidation of separate actions against the several defendants, and retained it for the verdict of the jury upon the merits of the case and the apportionment of damages among those defendants proved to be liable, instead of sustaining the demurrer and forcing the case out of court? In *Snow* v. *Rudolph* (Tex. Civ. App.), 131 S. W. 249, where a single cause of action was improperly split into several actions, the court treated a consolidation of these cases as the full substantial equivalent of a single action, and this was held on appeal to have cured the error. It would require no greater exercise of judicial ingenuity to treat a single action against several tort feasors as the full substantial equivalent of a consolidation of several actions against each, and in this way judicially permit the same procedural liberalty which the jurisdictions above mentioned have secured through legislation. A still keener appreciation of its obligation to make rules of procedure strictly subservient to the broader ends of justice would doubtless justify the court in wholly abandoning the common law restriction and adopting the statutory rule above referred to as a general rule of practice.

SALES—EFFECT OF FRAUDULENT MISREPRESENTATIONS.—In an action by a vendee of stock to recover the purchase price on the ground that, by false and fraudulent representations, he had been induced by a company to buy stock therein, in the belief that it was another and different company, *held,* that he might have rescinded without showing damage had he elected to do so with reasonable promptness, but this right is lost by unreasonable delay. *Everson* v. *J. L. Owens Mfg. Co.* (Minn., 1920), 176 N. W. 505.

Ordinarily, the element of fraud does not make the transaction void, but merely voidable as between the original parties. This voidable title may be transformed into a valid one either by subsequent express or implied acquiescence with knowledge of the facts on the part of the one defrauded, or by a resale to a bona fide purchaser before the transaction is disaffirmed by the original seller. In order to transfer even a voidable title to the buyer, there must be a contract of some sort between the original parties. It seems to be settled that where the misrepresentation is as to some fact other than the identity of the buyer, a contract comes into existence sufficient for this purpose. Where the buyer misrepresents his identity, however, a more difficult question is presented. Where such a sale is by correspondence, no title passes, since there is no meeting of minds, hence no contract, and a resale to a bona fide purchaser will not give good title as against the original seller. *Cunday* v. *Lindsay,* 3 App. Cas. 459, 464. In such a case, the seller is said to have two inconsistent intents which he supposes to be identical: one, to transfer title to the writer of the letter; the other, to transfer it to the bearer of the name signed thereto. Obviously, there is a meeting of the minds as to the first intent, but not as to the second, which is held to be the primary intent and governs the nature of the transaction. Where the buyer appears in person, but represents that he is buying as an agent, the rule is the same and the application is even clearer, since the seller, in that case, could have but one intent: to contract with the supposed principal. *Rodliff* v. *Dallinger,* 141 Mass. 1. Where the buyer appears before the seller in person, and purports to contract as a principal, but falsely represents himself to be another person, the rule seems just as clearly settled that the primary intent is to contract with the person actually present, thereby conferring a voidable title so that a subsequent bona fide purchaser will be protected against the original vendor. But few cases have been decided on the point, however, and no less an authority than Sir Frederick Pollock believes that at least it is a nice question, despite the present weight of authority. *Phillips* v. *Brooks, Ltd.* [1919], 2 K. B. 243, the most recent case of this type, follows the rule of *Edmunds* v. *The Merchants' Dispatch Transportation Co.,* 135 Mass. 283, the original case on this question. The sole basis for the decision in that case was the weight of reason as it appeared to the court, aided and abetted by a bit of harmless dictum from *Cunday* v. *Lindsay, supra,* to the effect that "where the chattel has come into the hands of the first buyer by a *de facto* contract * * * the purchaser will obtain a good title." The court decided that under the circumstances there was a *de facto* contract, since the primary intent was to sell to the person present and identified by sight and hearing, despite the fact that there may have been a secondary and inconsistent intent to transfer title to the bearer of the name. Both of these cases have been questioned on the ground that apparently they are in conflict with an old and accepted rule of contracts laid down by Pothier, to the effect that whenever consideration of the person enters into a contract, any error with regard to the person destroys the assent of the party misled and consequently annuls the contract. POTHIER, OBL., §19; POLLOCK OF CONTRACTS

[8th ed.], p. 497n; 35 L. QUART. REV. 288. So far, at least, courts have taken the view that there is in reality no error in regard to the person in these cases, and that the misrepresentation as to name is not materially different from that as to solvency. If it can be said that there is any intent to pass title to the owner of the name, however, there is certainly error with respect to the person, and the rule of Pothier would seem to be applicable. See further, 13 L. R. A. (N. S.) 413, and 24 R. C. L. 317.

SALES—IMPLIED WARRANTY—NEGLIGENCE.—Plaintiff alleged that he had been poisoned through eating beans from a can purchased by his agent from a retail grocer, who had brought it from a wholesaler, who had bought it from defendant, in whose factory it had been canned. The proof showed that defendant's system of operation in the canning process had been conducted with the highest degree of foresight and care. *Held,* the case was properly submitted to the jury. *Davis* v. *Van Camp Packing Co.,* (Ia., 1920) 176 N. W. 382.

The liability of defendant involves three properly distinct questions of law: 1. Does the law impose upon a manufacturer of food a liability as warrantor of its absolute wholesomeness even though no warranty is implied in fact. 2. Is a manufacturer liable, as for negligence, in putting out deleterious food, although he has not in fact been negligent. 3. Can either of the foregoing obligations be taken advantage of by one who did not himself purchase from the manufacturer. The principal case answers number one and three in the affirmative, but seems to evade the second by leaving to the jury the question of whether there was in fact negligence. Many authorities on all three questions are cited. The first and second questions are discussed in 18 MICH. L. REV. 316. The liability on imposed "warranty" was held not to run in favor of the remote owner in several cases; *Nelson* v. *Armour Packing Co.,* 76 Ark. 352; *Tomlinson* v. *Armour Packing Co.,* 75 N. J. L. 748; *Roberts* v. *Anheuser Busch Assn.,* 211 Mass. 449; *Prater* v. *Campbell,* 110 Ky. 23; *Crigger* v. *Coca Cola Bottling Works,* 132 Tenn. 545. But to the extent that the "warranty" by manufacturer of food is a liability imposed by law rather than one consciously, or by reasonable implication, assumed by contract, any "privity of contract" is quite unnecessary, and some recent decisions so hold. *Mazetti* v. *Armour & Co.,* 75 Wash. 622; *Ward* v. *Morehead City Seafood Co.,* 171 N. C. 33; *Catani* v. *Swift & Co.,* 251 Pa. 52; dissenting opinion in *Drury* v. *Armour & Co.,* (Ark.) 216 S. W. 40. The liability for *negligence,* whether actual or by fiction of law, can be taken advantage of by a remote buyer. 18 MICH. L. REV. 436; 15 MICH. L. REV. 672.

WATERS AND WATERCOURSES—WASTING PERCOLATING WATERS.—The defendant in a suit for injunction against diversion of percolating waters, used the water as a running supply for his stock, the overflow forming a wallow for his hogs. This user was of such an extent as to cause a spring on the plaintiff's land, which furnished water for human consumption, to cease running. *Held,* such user amounted to waste and was enjoinable. *De Bok* v. *Doak,* (Ia., 1920) 176 N. W. 631.